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LETTERS

WHICH PASSED BETWEEN

COMMODORE JOHNSTONE

AND

CAPT. EVELYN SUTTON,

IN 1781,

WITH RESPECT TO THE

Bringing Captain SUTTON to TRIAL.

L. B. T. R. S.

WHICH PASSED

COMMUNION

RECEIVED

PRINTED BY THE

THE friends of Captain Sutton have endeavoured to make the world believe, that he has been an injured man, and have grounded that report, chiefly, upon the circumstance of his having been sent, under arrest, in the Isis, to the East Indies; by which his trial was delayed from April 1781, till December 1783: it has been judged proper to reprint the Letters, which passed between Commodore. Johnstone and Captain Sutton, on the subject of his Trial, as a full refutation of that report.

These Letters were produced as evidence to the Court Martial, which tried Captain Sutton at Portsmouth in December 1783, and were printed as part of that trial.

From these Letters, it will appear, that it was the Commodore's full intention and wish, to have had Captain Sutton tried forthwith at Port Praya; but as the success of the secret expedition depended entirely upon following the French fleet, with the utmost possible dispatch, that the enemy might not

arrive first at the Cape of Good Hope, and as, after the elapse of the time which Captain Sutton asked to prepare himself, there remained only two days for the trial, before the day appointed for sailing, which was fixed for the 28th, and as it could not be ascertained, with any certainty, that the trial, which in fact took afterwards nine days at Portsmouth, would be ended within the two days which could then be spared ; for these reasons, the Commodore found himself compelled to acquaint Captain Sutton, that he could not order a Court Martial to be assembled, for his trial, at Port Praya.

It appeared upon the trial at Portsmouth, that the Commodore had, on the 17th of April, given Captain Sutton verbal notice, on board the Isis, that he would bring him to trial ; and on the 22d of April, the day after the Isis got back to Port Praya, the Commodore sent Captain Sutton the charges in writing. On the 23d of April, Captain Sutton desired three days to prepare for his trial, though he had already had six days notice, from the 17th.

By express Act of Parliament, if a Court-Martial is once assembled, it must sit from day to day, till sentence be given, and all the members must remain till then on board the ship in which
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the Court shall first assemble ; and if in this case, a Court-Martial had been assembled, the power of the Commodore to order the fleet to sail would have been totally suspended till the trial had been finished.

It will also appear by these Letters, that every sort of politeness and indulgence was shewn to Captain Sutton, after his arrest ; that his request for leave to go out of his ship whenever he chose, was immediately complied with ; and that he had afterwards the leave he desired, to go on board the Hero, though he did not make use of it ; and he was acquainted by letter, that the Commodore could have no objection to any arrangement, that could make his situation more agreeable to himself.

It further appears, by these Letters, that there was afterwards, at Saldanha Bay, every disposition in the Commodore, to bring on the trial, as soon as possible, consistently with the public service ; and that, as the Isis had been expressly ordered, by the Admiralty, to be sent to the East Indies, from the Cape of Good Hope, the Commodore offered, by letter, at Saldanha Bay, to send Captain Sutton, and such witnesses as he desired, in one of the East India ships, to St. Helena, to be tried there ; or, if the trial could not be effected there,

there, to be sent to England; but Captain Sutton did not assent to that proposal; in consequence of which, he went, in the Isis, under arrest, to the East Indies, from whence he returned to England before the end of the year 1783.

LET.

LETTERS,

&c.

Ifis, 31st April, 1781.

“S I R,
“CONSCIOUS within myself, that I have done the service no injury, I cannot think of quitting my ship, but will submit to the judgment of a Court-Martial.

I am, Sir, your most humble servant,
(Signed) EVELYN SUTTON.”
Geo. Johnstone, Esq. &c. &c. &c.

Then several letters and copies of letters were produced by the Prosecutor and Prisoner, and read as follows:

Romney, in Port Praya Road, in the island of St. Jago, 22d April, 1781.

“S I R,
“THE manner in which the *Ifis* has been conducted, since I had reason to observe her conduct has been so unbecoming a ship of war com-

commissioned in his Majesty's service, that I have had daily cause to regret some omission or mistake in all the orders I have given; or the signals I have made which respected the Isis.

"I have, however, refrained taking judicial cognizance of those several faults, in hopes that the various admonitions which often followed on the occasion would have operated so as to have brought the ship into some disposition of order, to have done her duty like a man of war on which dependence can be placed on the day of trial: But your conduct, sir, on the 16th of April last, has so far disappointed those expectations, that I find it necessary to put you under an arrest to be tried by a Court-Martial, for disobedience of my verbal orders, and of my public signals, in not cutting your cables and putting to sea after the enemy, as I had directed; and for falling a-stern after you had joined the squadron, and not keeping up in the line of battle after you had cleared the wreck of the fore-top-mast, when I made the signal for the line of battle a-breast, and bore down on the enemy at sun-set; by which disobedience and neglect the enemy were enabled to take their disabled ship in tow; to lead the squadron under my command far to leeward of the island; to draw matters on in such a train, that it became impossible to engage them with our whole force before the close of the day; and in case of following

lowing the enemy until the morning, or attacking them in the night, I must have given up all hopes of ever rejoining the transports and East-India ships under my convoy, whereby an opportunity was lost of improving the victory we had obtained. I have further to add, that I have judged it proper to appoint the Honourable Captain Thomas Lumley to command the *Ifis* in the mean time, until a Court-Martial can be conveniently held.

I am, Sir,

Your most obedient and most humble servant,

GEO. JOHNSTONE."

Capt. Sutton, Ifis.

Ifis, Port Praya Road, 23d April, 1781.

" S I R,

" AS I shall be ready for my trial in the course of three days, I beg a Court-Martial may be assembled to try me in this place. Being under an arrest, I beg your permission to go out of the ship whenever I choose.

I am, Sir,

Your most humble servant,

(Signed)

EVELYN SUTTON."

Geo. Johnstone, Esq. &c. &c.

Romney, 23d April, 1781.

" S I R,

" IF it is possible to bring on your trial, after

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you

you shall acquaint me that you are prepared, compatible with the public service, it shall be done; in the mean while you have permission to go and come, and do what you please on board the ships or on the shore. But I beg leave to say that the probable chance of your being tried here, will increase in proportion to the shortness of the time you take to prepare for the trial.

I am, Sir,

Your obedient humble servant,

GEO. JOHNSTONE."

" Captain Lumley has my directions to do all things to accommodate you, and no doubt he will order the barge or best boat to attend you; but if there is any doubt, you will say it is my directions."

Captain Evelyn Sutton.

Isis, 24th April, 1781.

"S I R,

"I SHALL be prepared for my trial by Thursday next, and shall be greatly obliged, if you will order the Court to be assembled, that I may be tried that day.

I am, Sir,

Your most obedient and very humble servant,

EVELYN SUTTON."

Geo. Johnstone, Esq. &c. &c. &c.

Romney,

Romney, in Port Praya Road, 26th April, 1781.

" S I R,

" IT would give me great pain to be obliged to carry you forward in arrest. I wish a speedy decision on your conduct; but I cannot think of ordering a Court-Martial to be assembled which may detain the fleet. If the business could be done in two days, I will order a Court-Martial to-morrow: the evidence I shall call will not last three hours. What time your defence may demand, I cannot say. It is not my desire to abridge it, but to state my difficulties to you for consideration. If the business could be finished on Saturday night, by the Captains agreeing to sit as late and as early as they are permitted, and you would give me any hopes that the proceedings of the Court-Martial might be finished, to enable us to sail on Monday, I would give up my own time to that duty to-morrow and Saturday, notwithstanding the multiplicity of other affairs that hourly call on me in the equipment of the fleet.

I am, Sir,

Your most obedient and most humble servant,

GEO. JOHNSTONE."

Captain Evelyn Sutton.

Ifis, Port Praya Road, April 26, 1781.

“ S I R,

“ I AM favoured with yours, and am much obliged by your kind offer to assemble a Court-Martial to-morrow. I cannot presume to say what length of time it will take to go through the whole of my evidence, nor could I wish to take up more of yours than is necessary: yet I think, if a Court-Martial can be assembled to-morrow by nine o'clock, it may readily be got through by Saturday night.

I am, Sir,

Your most obedient servant,

(Signed) EVELYN SUTTON.”

Geo. Johnstone, Esq.

Romney, Port Praya, 26th April, 1781.

“ S I R,

“ AS in all probability the fleet will be ready to leave this place on Monday; as a moment's delay in our proceedings to the place of our destination is of more consequence than the interest of any individual, however respectable; as I find it cannot be ascertained to any degree of probability, much less certainty, that your Court-Martial, if assembled to-morrow, will finish by Saturday night; and as the Court, when once assembled, are required to sit from day to day until sentence shall be given; I am sorry to acquaint

quaint you, that, for these reasons, after mature consideration, I have determined not to order the Court-Martial for your trial to be assembled here.

I am, Sir,

Your most obedient and most humble servant,
GEO. JOHNSTONE."

Captain Evelyn Sutton.

(C O P Y.)

*Romney, Port Praya Road, in the Island of
St. Jago, 29th April 1781.*

"SIR,

I CERTAINLY can have no objection to any arrangement which can make your situation more agreeable to yourself; and therefore you have my leave to go on board the Hero, with Captain Hawker's approbation; at the same time, I desire it may be clearly explained to him, and understood by you, that this shall not prevent me, in the civility between one gentleman and another, from shifting my pendant to the Hero when I shall judge it proper so to do.

I am, &c.

GEO. JOHNSTONE."

Captain Evelyn Sutton.

Isis, at Sea, 22d June, 1781.

"SIR,

"NOTHING can be more distressing to a person of any sensibility or feeling, than to labour under a galling load of charges, without an opportunity of throwing the weighty imputations from him. It is even some kind of comfort to know the event of matters, should justice decide against, than be crushed by degrees from carrying too long the oppressive burthen of charges which you have heaped upon me.

The laws of England do not admit of long imprisonments. As a person brought up under those laws, I feel a right to ask, what measure you mean to take with me? and where I am to have my trial? as I learn the *Isis* is going to the East-Indies.

I am, Sir,

Your most obedient,

And humble servant,

(Signed) EVELYN SUTTON."

Geo. Johnstone, Esq. &c. &c. &c.

(C O P Y.)

Romney, at Sea, 24th June, 1781.

"SIR,

"I AM as anxious to bring on your trial, as you can possibly feel inclined to meet the issue; and that it has not already been held, cannot in justice

justice be imputed to me, since I was willing to give up some material points to have effected it at Praya. If you will be pleased to recollect the time that has elapsed from the arrest of other Captains when abroad, under similar accusations, to the time of their trial, you will be satisfied that your suspension has been of short duration hitherto; and you must be convinced, by reflection, that our unstable situation, and the variety of contingent events to which our service is liable, does not often admit of quick and speedy determinations under the present form of trial.

“ From the orders I am under respecting the different ships of the Squadron, and the possible dispersion of them, I foresee many inconveniences which may arise in your case, to which I can apply no remedy but an anxious care to avoid a separation, and to lose no opportunity of holding the Court-Martial as soon as it can be assembled without injury to his Majesty's service.

“ It is true, that the Isis is one of his Majesty's ships ordered to the East-Indies; and, upon a final separation in a chain of proceedings, I confess she has orders adapted to that instruction. No doubt, if we should be so unfortunate as finally to separate, the Commanding Officer in the East Indies will send you, and the evidences you may require, in the first safe conveyance to England.

“ To

"To remove you from the *Isis* to any particular ship at present, and to collect your evidences into that ship, upon the prospect of an event which may not happen, might appear harsh, and be liable to improper constructions, unless you shall desire it, and the several witnesses consent. It is my wish to bring you to your trial with as much decorum and civility as the nature of such a proceeding will admit; and for this purpose, after explaining the fact, I am willing to listen to any proposal you can make for facilitating and securing the trial.

I am, Sir, Your most obedient and most humble servant,
(Signed) **GEO. JOHNSTONE.**"

Captain Evelyn Sutton.

Isis, at Sea, 25th June, 1781.

"SIR,
"I CANNOT pretend to answer every particular you have mentioned in your letter of the 24th June. I am no ways qualified to judge how far you were inclined to give up material points to effect my trial at Praya; the truth of that is best settled in your own breast; the world at large can only judge by common occurrences. I cannot think of making any proposals relative to myself: you are the executive power; I am your prisoner; of course you are at liberty to use
your

your own discretion. I must naturally wish to see a speedy determination put to my trial.

I am, Sir,

Your most obedient

and most humble servant,

(Signed)

EVELYN SUTTON."

Geo. Johnstone, Esq.

Romney, at Sea, 17th July, 1781.

" SIR,

" AS it is possible a separation of his Majesty's ships may take place, I desire to know what are the names of the witnesses you propose to call in your defence to the charge I have delivered to you, that I may consider of such arrangements as may be practicable to effect your trial.

I am, Sir,

Your most obedient

And most humble servant,

GEO. JOHNSTONE."

Captain Evelyn Sutton.

Isis, Sea, July 18, 1781.

" SIR,

" INCLOSED I have sent you a list of the witnesses I mean to call to my defence, agreeable to your desire, reserving to myself the right to

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summons

summons any other persons I please, according to the place I am tried at.

I am, Sir,

Your most obedient

And most humble servant,

(Signed) EVELYN SUTTON."

Geo. Johnstone, Esq. &c. &c.

List of Witnesses for Captain SUTTON.

Rowland Carter, Captain of Marines.

William Read, first Lieutenant.

William Harvey, second ditto.

Dundas Bruce, third ditto.

Benjamin Savage, Master.

Thomas Ireland, Boatswain.

John Smith, Carpenter.

George Waterston, Master's Mate.

William Fishick, ditto.

Archibald Young, Quarter Master.

Michael Robertson, ditto.

John Shadford, ditto.

Joseph Foreside, Seaman.

Robert Bell, Midshipman.

N. B. "Whatsoever you mean to do with me, I must request to have my Clerk with me, whose name is Harrison.

E. SUTTON."

Isis,

Isis, Saldanha Bay, 22d July, 1781.

" SIR,

" AS the fleet has arrived here without separation, I beg leave to request my trial at this place. You may rest assured I will employ as little of your time as I can; and, that a speedy determination may be put to my disagreeable situation, I will call as few witnesses as possible, by which means I judge a decision may be put on my conduct in one day.

I am, Sir,

Your most obedient,

and most humble servant,

EVELYN SUTTON."

Geo. Johnstone, Esq. &c. &c.

Romney, Saldanha Bay, 22d July, 1781.

" SIR,

" YOUR messenger would acquaint you that I received your letter of this day's date, requesting your trial at this place, as I was passing in a boat with General Medows to examine some prisoners, and reconnoitre the upper parts of this bay.

" I am only this moment returned on board, so that it was out of my power to send you the answer in writing before.

" The slightest reflection must convince you how impracticable it is to hold a Court-Martial in

an enemy's port, in the situation in which we stand.

" If I could seriously sign such an order, and lock up the Captains of the squadron and myself from all other duty at this moment, the Court should pay very little regard to any charge I could exhibit.

" I shall, however, impute your request to the eager impulse of meeting the accusation, which makes you overlook the impossibility of gratifying your desire.

" While I applaud this disposition, I must lament it did not appear equally strong at St. Jago, when the business was practicable, and I wrote to you twice on the subject; and was willing to have employed double the time you now think it will require to determine the sentence; and I should certainly have ordered the Court-Martial, if you had thought proper to have offered half the assurances respecting the probability of its duration, which you are now pleased to communicate.

I am, Sir,

Your most obedient
and most humble servant,

GEO. JOHNSTONE."

Capt. Evelyn Sutton.

" Romney,

Romney, Saldanha Bay, 23d July, 1781.

"SIR,

"AS the most probable means of effecting your trial, I offer to send you, and the evidences you desire, in one of the East-India ships to St. Helena.

"If this proposal meets with your and their approbation, you will immediately acquaint me.

"If your trial cannot be effected at St. Helena, you will be sent to England.

I am, Sir,

Your most obedient

and most humble servant,

GEO. JOHNSTONE."

Capt. Evelyn Sutton.

Isis, Saldanha Bay, 23d July, 1781.

"SIR,

"I have received the favours of your letters of the 22d and 23d July this day. In one part of your letter of the 22d July, you express a wish that I had been as much inclined to meet my trial at St. Jago as at this place: I must beg leave to remind you, that I was equally so; that I requested my trial on Thursday the 26th of April; and that on the same day, at two o'clock, I received a letter from you, proposing to grant my trial the next day, Friday, if I thought it could be determined

mined by Saturday night. You'll recollect my reply was that I could not pretend to say what length of time my defence would take up; but that I would employ as little of your time as possible; and that I thought it might readily be settled by Saturday night, the time you limited. As to the letter dated the 23d of July, I can make no reply to, but you must use your own pleasure.

I am, Sir,

Your most obedient

and most humble servant,

EVELYN SUTTON."

Geo. Johnstone, Esq. &c. &c.

A case has been circulated by the friends of Captain Evelyn Sutton, which states, that Lieut. Fry of the Marines recovered one thousand pounds damages, in 1746, in an action against Sir Chaloner Ogle, as President of a Court-Martial, which had tried and condemned him, at Jamaica, to fifteen years imprisonment in the Marshalsea, and rendered him incapable of ever serving in his Majesty's service; and the ground of action is stated to have been "for excess of punishment, in abuse of judicial powers;" and that Chief Justice Willes declared, that he had also his action against every other Member of the Court-Martial.

This case is supposed to apply to the question now depending between Commodore Johnstone and

and Captain Sutton ; and that it proves not only that a Commander in Chief, acting within his powers, and in a course of discipline, is subject to such an action for civil damages, but that even the Members of a Court Martial are subject to such actions, for the sentences they may pronounce in their judicial capacity.

If such a precedent had existed, there can be little doubt, that many similar actions against the Members of Courts Martial must have been brought since the year 1746 ; but none have been brought. Neither can it be supposed, that Capt. Sutton's very able Counsel would have omitted to state this case of Lieut. Fry, at the bar of the House of Lords, if he had thought it applied ; but he stated no such case.

The truth is, that the case of Lieut. Fry was totally different ; the fact being, that the Court-Martial which tried Lieut. Fry, had pronounced sentence against him, for the offence they were directed to try, by which their power was at an end ; and when the sentence was read to him, he thought proper to use words of great contempt to the Members of the Court, telling them they might kiss his posteriors. For this, he was seized, and the severe sentence of imprisonment pronounced against him.

There can be no doubt, that this proceeding
was

was illegal. The Court Martial was at an end, when they had pronounced their first sentence, and they had no authority to punish Lieut. Fry for the contempt which, after the sentence, he shewed to the Members of the late Court. Damages were properly given for that illegal proceeding; and the damages were not too high, considering the cruelty of the punishment.

If such a precedent had existed, it could not have been brought forward in any Court Martial since the year 1746; but none have been brought. Neither can it be supposed, that Capt. Burton's very able Counsel would have omitted to state this case of Lieut. Fry, at the bar of the House of Lords, if he had been applied; but he stated no such case.

The truth is, that the case of Lieut. Fry was totally different; the fact being, that the Court-Martial which tried Lieut. Fry, had pronounced sentence against him, for the offence they were directed to try, by which their power was at an end; and when the sentence was read to him, although proper to use words of great contempt to the Members of the Court, telling them they might kill his posterity. For this, he was seized, and the severe sentence of imprisonment pronounced against him.

There can be no doubt, that this proceeding